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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

KRISTIN K. MAYES, Chairman  
GARY PIERCE  
PAUL NEWMAN  
SANDRA D. KENNEDY  
BOB STUMP

2009 MAR 18 A 11:54

ALL CORP. DECISIONS  
DOCKET CONTROL

Arizona Corporation Commission

DOCKETED

MAR 18 2009

DOCKETED BY

IN THE MATTER OF THE APPLICATION OF  
MOHAWK UTILITY COMPANY TO EXTEND  
ITS CERTIFICATE OF CONVENIENCE AND  
NECESSITY.

DOCKET NO. W-02341A-06-0040

PROCEDURAL ORDER

**BY THE COMMISSION:**

On January 24, 2006, Mohawk Utility Company, Inc. ("Company" or "Applicant") filed with the Arizona Corporation Commission ("Commission") an application for an extension of its Certificate of Convenience and Necessity ("Certificate") to provide water service in various parts of Yuma County, Arizona ("Application").

On February 23, 2006, the Commission's Utilities Division ("Staff") issued a Notice of Insufficiency to the Company pursuant to A.A.C. R14-2-411(C).

On July 14, 2006, Staff issued its second Notice of Insufficiency to the Company.

On March 8, 2007, Staff issued its third Notice of Insufficiency to the Company.

On May 9, 2007, 38 East, L.L.C. ("38 East") filed a Motion to Intervene ("Motion"). There were no objections filed to this Motion.

On May 21, 2007, by Procedural Order, 38 East's Motion was granted.

On June 17, 2008, Staff sent a letter to the Company notifying it that if the Company failed to file its 2007 Utilities Division Annual Report, Staff would move to close the docket administratively.

On October 17, 2008, Staff filed its report on the Company's Application. A review of the file indicates that certain issues connected to the Application were unclear.

On October 27, 2008, Staff issued a Notice of Sufficiency on the Company's Application.

On October 30, 2008, by Procedural Order, a status conference was scheduled on the Application on November 10, 2008

1 On November 10, 2008, at the status conference, a manager of 38 East appeared and Staff  
2 appeared with counsel. The Company did not enter an appearance and had not requested a  
3 continuance of the proceeding. Based on the Staff Report, it appeared that there had been changes in  
4 the Company's intention with respect to the area for which it is seeking an extension of its  
5 Certificate, and that the Company had not amended its Application. Additionally, a question has  
6 been raised with respect to the status of the Company's certified operator. By Procedural Order, the  
7 Company was ordered to file an amended Application along with the correct legal description for the  
8 area sought to be certificated herein. The Company was further ordered to file certification that the  
9 Company is currently being operated by a certified operator. Staff was directed to file a response to  
10 the Company's filing after it was completed.

11 On December 31, 2008, the Company filed an amended legal description for the area sought  
12 to be certificated herein.

13 On February 18, 2009, the Company filed a letter formally amending its Application herein  
14 and further indicated that the Company was working with the Arizona Department of Environmental  
15 Quality ("ADEQ") to complete the certification process for its operator.

16 On March 6, 2009, Staff filed a memorandum which indicated that the Company had properly  
17 amended its Application. Additionally, Staff contacted ADEQ which verified that the Company is  
18 being operated by a certified operator at the current time.

19 Accordingly, a hearing should be scheduled on the Company's Application, and pursuant to  
20 A.A.C. R14-3-101, the Commission now issues this Procedural Order to govern the preparation and  
21 conduct of this proceeding.

22 IT IS THEREFORE ORDERED that a **hearing** shall commence on **June 9, 2009, at 10:00**  
23 **a.m.**, or as soon thereafter as is practical, at the Commission's offices, 1200 West Washington Street,  
24 Room 100, Phoenix, Arizona 85007.

25 IT IS FURTHER ORDERED that an **amended Staff Report and associated exhibits** to be  
26 presented at hearing on behalf of Staff shall be reduced to writing and filed on or before 4:00 p.m. on  
27 **May 1, 2009.**

28 IT IS FURTHER ORDERED that any **objections** to the amended Staff Report and associated

exhibits to be presented at hearing by Applicant shall be reduced to writing and filed on or before 4:00 p.m. on **May 15, 2009**.

IT IS FURTHER ORDERED that **intervention** shall be in accordance with A.A.C. R14-3-105, except that all motions to intervene must be filed on or before **May 8, 2009**.

IT IS FURTHER ORDERED that Mohawk Utility Company shall provide public notice of the hearing in this matter, in the following form and style:

**PUBLIC NOTICE OF THE HEARING FOR MOHAWK UTILITY COMPANY. FOR AN  
EXTENSION OF ITS CERTIFICATE OF CONVENIENCE AND NECESSITY  
(Docket No. W-02341A-06-0040)**

On January 24, 2006, Mohawk Utility Company ("Applicant") filed an application for an extension of its Certificate of Convenience and Necessity to provide public water service to various parts of Yuma County, Arizona.

The application is available for inspection during regular business hours at the offices of the Commission in Phoenix, at 1200 West Washington Street, Phoenix, Arizona and at the Applicant's office, [insert office address] ] and on the internet via the Commission website (www.azcc.gov) using the e-docket function.

The Commission will hold a hearing on this matter commencing on **June 9, 2009, at 10:00 a.m.**, at the Commission's offices, 1200 West Washington Street, Phoenix, Arizona. Public comments will be taken on the first day of the hearing.

The law provides for an open public hearing at which, under appropriate circumstances, interested parties may intervene. Intervention shall be permitted to any person entitled by law to intervene and having a direct and substantial interest in the matter. Persons desiring to intervene must file a written motion to intervene with the Commission, which motion should be sent to Applicant or its counsel and to all parties of record, and which, at the minimum, shall contain the following:

1. The name, address, and telephone number of the proposed intervenor and of any party upon whom service of documents is to be made if different than the intervenor.
2. A short statement of the proposed intervenor's interest in the proceeding (e.g., a customer of Applicant, a shareholder of Applicant, a competitor, etc.).
3. A statement certifying that a copy of the motion to intervene has been mailed to the Applicant or its counsel and to all parties of record in the case.

The granting of motions to intervene shall be governed by A.A.C. R14-3-105, except that all motions to intervene must be filed on or before **May 8, 2009**. The granting of intervention, among other things, entitles a party to present sworn evidence at hearing and to cross-examine other witnesses. However, failure to intervene will not preclude any customer from appearing at the hearing and making a statement on such customer's own behalf.

If you have any questions or concerns about this application or have any objections to its approval, or wish to make a statement in support of it, you may write the Consumer Services Section of the Commission at 1200 West Washington Street,

1 Phoenix, Arizona 85007 or call 1-800-222-7000 or appear at the hearing and make  
comment.

2 The Commission does not discriminate on the basis of disability in admission to its  
3 public meetings. Persons with a disability may request a reasonable accommodation  
4 such as a sign language interpreter, as well as request this document in an alternative  
5 format, by contacting Shaylin Bernal, ADA Coordinator, voice phone number  
6 602/542-3931, E-mail sbernal@azcc.gov. Requests should be made as early as  
7 possible to allow time to arrange the accommodation.

8 IT IS FURTHER ORDERED that Mohawk Utility Company shall cause the above **notice to**  
9 **be published** at least once in a newspaper of general circulation in its service territory, with  
10 publication to be completed no later than **April 17, 2009**.

11 IT IS FURTHER ORDERED that Mohawk Utility Company **file certification of publication**  
12 as soon as practicable after the publication has been completed.

13 IT IS FURTHER ORDERED that notice shall be deemed complete upon publication of same,  
14 notwithstanding the failure of an individual or entity to read or receive the notice.

15 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113-Unauthorized  
16 Communications) applies to this proceeding as the matter is now set for hearing.

17 IT IS FURTHER ORDERED that all parties including 38 L.L.C., must comply with Rules 31  
18 and 38 of the Rules of the Arizona Supreme Court and A.R.S. § 40-243 with respect to practice of  
19 law and admission *pro hac vice*.

20 IT IS FURTHER ORDERED that Mr. Jeffrey Jennings may appear on his own behalf.

21 IT IS FURTHER ORDERED that the presiding Administrative Law Judge may rescind, alter,  
22 amend, or waive any portion of this Procedural Order either by subsequent Procedural Order or by  
23 ruling at hearing.

24 Dated this 18<sup>TH</sup> day of March, 2009.

25  
26   
27 MARC E. STERN  
28 ADMINISTRATIVE LAW JUDGE

Copies of the foregoing mailed/delivered  
this 18<sup>th</sup> day of March, 2009, to:


Jeffrey Jennings  
38 EAST, L.L.C.  
4371 East Colter Street  
Phoenix, AZ 85018-1642

Robert Chris Rockwell  
MOHAWK UTILITY COMPANY, INC.  
P.O. Box 1194  
36140 East Antelope Drive  
Wellton, AZ 85356-1194

Janice Alward, Chief Counsel  
Legal Division  
ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
Phoenix, AZ 85007

Ernest G. Johnson, Director  
Utilities Division  
ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
Phoenix, AZ 85007

ARIZONA REPORTING SERVICE, INC.  
2200 N. Central Ave., Suite 502  
Phoenix, AZ 85004-1481

By:   
Debra Broyles  
Secretary to Marc E. Stern